



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Plan for Periodic Review of Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of plan for periodic review of regulations; request for comments.

SUMMARY: Regulatory Flexibility Act (RFA) section 610 requires that NOAA Office of National Marine Sanctuaries (ONMS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. The RFA does not require agencies to periodically review existing regulations that were originally certified under RFA section 605 as a rule that will not have a significant economic impact on a substantial number of small entities. However, an agency may exercise its discretion to review certified rules to assess whether changed conditions may mean that the existing rules now have a significant economic impact on a substantial number of small entities. This plan describes how ONMS will exercise its discretion to conduct this assessment for specified rules certified under RFA section 605 and describes the regulations proposed for review in 2020.

DATES: Comments must be received on or before *[INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Comments may be submitted by:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2019-0086>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily submitted by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Meredith Walz, NOAA Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring MD 20910, Meredith.Walz@noaa.gov, or 240-355-0686.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601 et seq., requires that federal agencies take into account how their regulations affect “small entities,” which the RFA defines to include small businesses, small governmental jurisdictions and small organizations. 5 U.S.C. § 601. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA, 5 U.S.C. § 610, requires federal agencies to review existing regulations which have or will have a significant economic impact on a substantial number of small entities. It requires that ONMS publish a plan in the *Federal Register* explaining how it will review existing regulations that have a significant economic impact on a substantial number of small entities. Regulations that have a significant economic impact on a substantial number of small entities that became effective after January 1, 1981 must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that ONMS publish in the *Federal Register* a list of rules it will review during the succeeding 12 months. The list must describe, explain the need for, and provide the legal basis for the rules, as well as invite public comment on the rules.

In addition, section 605 of the RFA provides that if, when a rule is promulgated, the head of an agency certifies to the Small Business Administration's Chief Counsel for Advocacy that a rule would not have a significant economic impact on a substantial number of small entities, then initial and final regulatory flexibility analyses do not need to be prepared for the rule. Guidance on implementing the requirements of RFA section 610 indicates that agencies may exercise their discretion to determine if previously changed conditions may mean that a certified rule now does have a significant economic impact on a substantial number of small entities and, therefore, should be subject to a full section 610 review. If there is evidence that a previously certified rule is now having a significant economic impact on a substantial number of small entities, then the Small Business Administration recommends that the agency should conduct a section 610 review of the rule.

Criteria for Review of Existing Regulations

The purpose of a section 610 review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, RFA section 610(b) establishes five factors that agencies will consider in reviewing existing regulations for which a regulatory flexibility analysis was prepared:

- (1) Whether the rule is still needed;
- (2) What type of public complaints or comments were received concerning the rule;
- (3) How complex is the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- (5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

For rules that were certified under RFA section 605, ONMS is not required to conduct a review under RFA section 610. However, ONMS may exercise its discretion to prepare an assessment to determine whether changed conditions may mean that the existing rules now do have a significant economic impact on a substantial number of small entities. The assessment of certified rules may further consider whether the existing rules should be left unchanged, or whether they should be revised or rescinded to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes.

Plan for Periodic Review of Rules

ONMS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within 10 years of the year in which they were originally issued. During this same period, ONMS may exercise its discretion to also review rules certified under RFA section 605 as not having significant impacts. ONMS may evaluate whether changed conditions may mean that the existing rules now do have a significant economic impact on a substantial number of small entities and therefore should be reviewed under RFA section 610. ONMS intends that it will conduct section 610 reviews on applicable regulations on an annual basis. ONMS will make RFA Section 610 review reports available at the following website: <http://sanctuaries.noaa.gov/library/alldocs.html>.

ONMS Regulation Requiring Review for 2020

Two rulemakings finalized in 2010 were certified under RFA section 605 and are being assessed by ONMS to determine whether changed conditions may mean that the existing rules now do have a significant economic impact on a substantial number of small entities and therefore should be reviewed under RFA section 610. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that these rules would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not required, and none were prepared for the following actions:

1. “Gray’s Reef National Marine Sanctuary Spearfishing Regulations”. RIN 0648-AX37 (75 FR 7361; February 19, 2010). This final rule prohibited the use of spearfishing gear in Gray’s Reef National Marine Sanctuary (GRNMS or sanctuary). Possession of spearfishing gear is also prohibited except for vessels passing through the sanctuary without interruption. The final

rule also facilitated enforcement of an existing prohibition against the use of powerheads within the sanctuary.

2. “Florida Keys National Marine Sanctuary Discharge Regulations.” RIN 0648-AX58 (75 FR 72655; November 26, 2010). This rule eliminated the exemption that allowed discharges from within the boundary of the sanctuary of biodegradable effluent incidental to vessel use and generated by marine sanitation devices (MSDs) approved under the Clean Water Act (CWA), and required that MSDs be secured to prevent discharges of treated and untreated sewage.

ONMS invites comments on these rules, and whether any conditions have changed for any of these rules, or for small business conducting activities in these areas that would require ONMS to conduct RFA section 610 review of those regulations. ONMS will evaluate comments on whether those rules now have a significant impact and therefore should be reviewed under RFA section 610. Unless we publish a notice stating otherwise, ONMS will make any reports available at <http://sanctuaries.noaa.gov/library/alldocs.html>.

John Armor,

Director,

Office of National Marine Sanctuaries

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